

REMARKS

Claims 25 - 45 remain pending in this application. Applicant submits that claims 25-45 are patentable over U.S. Patent No. 6,623,207 to Grubba et al. (Grubba) in view of U.S. Patent No. 4,162,998 to Doi et al. (Doi). Applicant further submits that claims 25-45 are patentable over Grubba in view of Doi and further in view of U.S. Patent No. 4,373,961 to Stone (Stone).

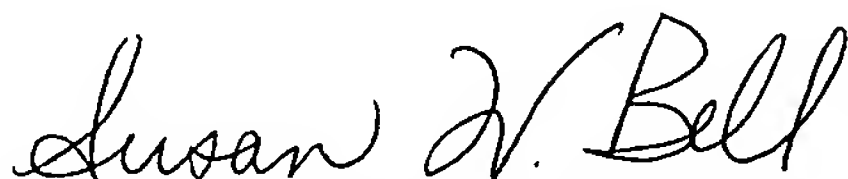
U.S. Patent No. 6,623,207 to Grubba should be disqualified as prior art for the pending application. "Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, ... subject to an obligation of assignment to the same person." 35 U.S.C. §103(c). See also MPEP 706.02(l)(1) and (2). Grubba and the claimed invention both were subject to an obligation of assignment to KMC Enterprises, Inc. at the time the claimed invention was made. Accordingly, Grubba should be disqualified as prior art pursuant to 35 U.S.C. §103(c).

Neither Doi nor Stone nor the combination of these references is able to disclose or suggest Applicant's claimed invention. Doi does not disclose or suggest testing an asphalt mixture for performance using a moisture susceptibility test, as claimed by Applicant. Stone is merely cited to teach a cationic emulsifier. The combination of Doi and Stone does not disclose or suggest testing an asphalt mixture for performance using both a raveling test and a moisture susceptibility test, as claimed by Applicant in all the pending claims. For the foregoing reasons, a *prima facie* case of obviousness has not been established.

In view of the foregoing remarks, it is respectfully submitted that the claims are in condition for allowance and eventual issuance. Such action is respectfully requested. Should the Examiner have any further questions or comments which need be addressed in order to obtain allowance, please contact the undersigned attorney at the number listed below.

Acknowledgement of receipt is respectfully requested.

Respectfully submitted,

By: 
Susan Wharton Bell, Reg. No. 41,524
STINSON MORRISON HECKER LLP
1201 Walnut, Suite 2800
Kansas City, MO 64106-2150
Telephone: (816) 842-8600
Facsimile: (816) 691-3495